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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Frontier Communications of America, Inc.
Petition for Preemption of Tennessee Code
Annotated § 65-29-102 and the Tennessee
Regulatory Authority's Decision That This
Statute Restricts Frontier's Statewide
Certificate of Convenience to Operate as a
CLEC

WC Docket No. 05-_____

PETITION FOR PREEMPTION AND DECLARATORY RULING

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SUMMARY

The Tennessee Regulatory Authority (TRA) pursuant to a state statute has ruled that Frontier Communications of America, Inc., despite having a statewide CLEC certificate of authority, is not permitted to compete as a CLEC in a telephone cooperative's territory. By this Petition Frontier requests the Commission to preempt this statute, T.C.A. § 65-29-102, and to rule that Frontier is entitled to begin competing with the telephone cooperative pursuant to the terms and conditions of an interconnection agreement that has been duly filed and approved by the TRA.

Frontier and Ben Lomand have adjoining ILEC territories. The only legal difference between the two is that Frontier is organized as a corporation while Ben Lomand is organized as a telephone cooperative. This distinction, however, has allowed Ben Lomand to compete in Frontier's territory through an affiliate CLEC while insulating its cooperative territory against Frontier's competitive entry under color of state law. The requested preemption and declaratory relief are necessary and appropriate because of the obvious anticompetitive impact of the statute and the TRA's ruling. It is manifestly anticompetitive, unfair and unlawful to give a cooperative an exemption from competition under color of state law while at the same time allowing the cooperative to use an affiliate to compete within the territory of its adjoining ILEC. Such a complete lack of competitive neutrality calls for a remedy. Because the TRA apparently felt that its hands were tied by its governing statutes, the Commission must preempt.

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PETITION FOR PREEMPTION AND DECLARATORY RULING

Introduction and Factual Background

This Petition arises from the refusal of the Tennessee Regulatory Authority ("**TRA**") to allow an Incumbent Local Exchange Carrier ("**ILEC**") affiliate to enter a market as a Competitive Local Exchange Carrier ("**CLEC**") on an edge-out basis into the territory of an adjoining telephone cooperative. The cooperative is already itself competing through an affiliate as a CLEC on an edge-out basis within the first ILEC's territory. This Petition seeks redress from this grossly anticompetitive situation, which allows a telephone cooperative to compete in another ILEC's territory while insulating its own base from similar competitive entry under cover of state law.

On April 28, 1999 in Docket No. 98-00600, the TRA granted a Certificate of Convenience to Ben Lomand Communications ("**BLC**"), a subsidiary of Ben Lomand Rural Telephone Cooperative, Inc. ("**Ben Lomand Coop**")¹ to compete as a CLEC outside of Ben Lomand Coop's territory. BLC proceeded to enter the adjoining territory of Citizens Telecommunications Company of Tennessee L.L.C., an ILEC doing business as Frontier Communications of Tennessee ("**Frontier of Tennessee**"). BLC built its own distribution

¹ Ben Lomand Coop and BLC are jointly herein referred to as "Ben Lomand."

network in Frontier of Tennessee's territory, using Ben Lomand Coop's switching capacity. BLC achieved a great deal of success in its CLEC activities and has taken substantially more than half of Frontier of Tennessee's former customers in the areas that BLC serves.

Frontier Communications of America, Inc. ("**Frontier of America**"), an affiliate of Frontier of Tennessee,² had previously obtained a statewide Certificate of Convenience from the TRA by order dated June 27, 1996³ to operate as a CLEC outside of Frontier of Tennessee's territory. Frontier determined that it would be appropriate to exercise this certificate by competing as a CLEC in Ben Lomand Coop's territory. At Frontier of America's request, Frontier of America and Ben Lomand Coop entered into interconnection negotiations and on July 6, 2004 executed an interconnection agreement, attached hereto as **Exhibit A**. This interconnection agreement was approved by the TRA by order dated November 24, 2004 in Docket No. 04-00233. In that order, the TRA stated, "The agreement is in the public interest as it provides customers with alternative sources of telecommunications services within the service area of [Ben Lomand Coop]. "

During the negotiations, Ben Lomand Coop maintained that Frontier of America lacked the legal authority to act as a CLEC in Ben Lomand Coop's territory, citing (among other things) Tennessee Code Annotated § 65-29-102, which states:

Cooperative, nonprofit, membership corporations may be organized under this chapter for the purpose of furnishing telephone service in rural areas to the widest practical number of users of such service; provided, that there shall be no duplication of service where reasonably adequate telephone service is available.

² Both Frontier companies are under the common ownership of Citizens Communications Company, a publicly held corporation. Frontier of Tennessee and Frontier of America are jointly herein referred to as "Frontier."

³ At that time Frontier of America was named Citizens Telecommunications Company.

Accordingly, in order to preserve each party's rights and to avoid the need to arbitrate an interconnection agreement, the parties agreed to a clause in the interconnection agreement that provides as follows:

13.1 This Agreement will become effective upon:

~~(a) issuance of a final order by a regulatory body or court with the requisite jurisdiction to grant Citizens with all necessary regulatory approval and certification to offer local exchange and local exchange access services in the geographic areas to which this Agreement applies; and~~

(b) approval of this Agreement by the Commission

Based on this language, on October 26, 2004 Frontier of America filed a Petition for Declaratory Ruling with the TRA seeking a determination that it has the authority to provide CLEC service in Ben Lomand Coop's territory. Ben Lomand Coop moved for dismissal of the petition primarily on the ground that only the Federal Communications Commission has the authority to determine whether the 1996 Telecommunications Act, 47 U.S.C. §253(a), preempts Tennessee Code Annotated § 65-29-102. There can be no doubt that if Frontier had filed initially with the FCC, Ben Lomand Coop would have moved for dismissal on the ground that only the TRA has the authority to determine that Frontier of America is certified to provide CLEC services in Ben Lomand Coop's territory.

Despite Frontier's efforts to move the case forward, it languished at the TRA. Ultimately, on November 7, 2005, the TRA granted Ben Lomand Coop's motion for dismissal on the ground that state law does not permit the TRA to grant authority for CLECs to serve territories served by telephone cooperatives. A transcript of the conference at which the TRA made this decision is attached as **Exhibit B**.⁴ Two of the three TRA directors making statements at the conference stated that this matter might more appropriately be handled at the FCC.

⁴ Frontier has requested but the TRA has not issued a written order. If and when such an order is issued, Frontier will supplement the record in this proceeding.

Ben Lomand has now managed to thwart CLEC competition within its territory on procedural grounds for nearly 17 months since the execution of the interconnection agreement, all the while it continues to act as a CLEC in Frontier's territory and continues to erode Frontier's customer base. The Commission should not countenance this bare-faced anticompetitive conduct, and should promptly grant the relief requested by Frontier so that Frontier can at long last compete with Ben Lomand on the same basis that Ben Lomand is competing with Frontier.

I. T.C.A. § 65-29-102 Is Preempted by 47 U.S.C. § 253(a).

The relevant Federal statute, 47 U.S.C. § 253(a) unequivocally states, "No State or local statute or regulation, or other State or local requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." The Commission has previously ruled that this statute preempts T.C.A. § 65-4-201(d), which was supposed to protect the territory of ILECs with less than 100,000 lines. *In The Matter Of AVR, L.P. d/b/a Hyperion of Tennessee, L.P. Petition for Preemption of Tennessee Code Annotated § 65-4-201(d) and Tennessee Regulatory Authority Decision Denying Hyperion's Application Requesting Authority to Provide Service in Tennessee Rural LEC Service Areas*, Memorandum Opinion and Order, CC Docket No. 98-92, 14 FCC Rcd 11064 (1999), *pet. for reh'g den.*, 16 FCC Rcd 1247 (2001) ("**Hyperion Preemption Order**"). This case raises preemptive issues that are nearly identical to those in the Hyperion case.⁵ For the reasons set forth in the *Hyperion Preemption Order*, the federal statute should preempt T.C.A. § 65-29-102 as anticompetitive.

⁵ This case is also similar in its essential facts to two previous preemption decisions cited as precedent in the *Hyperion Preemption Order*. *The Public Utility Commission of Texas*, Memorandum Opinion and Order, 13 FCC Rcd 3460 (1997); *Silver Star Telephone Company, Inc. Petition for Preemption and Declaratory Ruling*, Memorandum opinion and Order, 12 FCC Rcd 15639 (1997) ("**Silver Star Preemption Order**").

Consistent with 47 U.S.C. § 253(a) and the Commission's ruling cited above, Tennessee's legislature has stated that it is the policy of this state "to foster the development of an efficient, technologically advanced, statewide system of telecommunication services by permitting competition in all telecommunications services markets ... ". T.C.A. § 65-4-123. In fact, when the TRA approved the Certificate of Convenience for BLC to compete outside Ben Lomand Coop's territory, it held that the "application would inure to the benefit of the present and future public convenience by permitting competition in the telecommunications services markets in the State ...". TRA Order, dated April 28, 1999 (Docket No. 98-00600). In addition, T.C.A. § 65-29-102 has been construed by the Tennessee Attorney General to prohibit telephone cooperatives from providing service where "reasonably adequate service is available," not as a means for a telephone cooperative to protect its own territory. See Op. Atty. Gen. No. 90-83, Aug. 27, 1990. Finally, as noted above, when approving the interconnection agreement between Frontier of America and Ben Lomand Coop the TRA found that additional sources of telecommunications services within the territory of Ben Lomand Coop would be in the public interest. Despite the Federal statute, the State statute, the Tennessee Attorney General opinion and its own previous findings, the TRA has issued an order improperly exempting a cooperative from competition within its territory, regardless of the fact that the cooperative is actively competing through a wholly owned subsidiary outside of its territory.

The preemption analysis set forth in the *Hyperion Preemption Order* turns primarily upon whether the challenged state restriction is "competitively neutral," and a finding that the restriction is not competitively neutral is fatal to the restriction.⁶ In the case at hand, the lack of competitive neutrality is painfully obvious. Frontier and Ben Lomand each have both ILEC and out-of-territory CLEC operations. The TRA allows Ben Lomand, through its CLEC, to compete in Frontier's territory. Ben Lomand has, in the course of its competition with Frontier, taken

⁶ *Hyperion Preemption Order*, ¶¶ 18, 18; 47 U.S.C. § 253(b).

away many of Frontier's customers. On the other hand, the TRA refuses to allow Frontier, through its CLEC, to compete in Ben Lomand's territory. Ben Lomand thus has the enviable ability to finance its competitive CLEC operations from an untouchable ILEC base, and its captive ILEC customers are denied the benefits of competition.

A single example suffices to prove the anticompetitive effect of the TRA's refusal to allow Frontier to compete in Ben Lomand's territory. The Warren County school system recently issued a request for proposals ("RFP") to serve all schools within its district. Some of the Warren County schools are within Frontier's ILEC territory, and the rest of the schools are within Ben Lomand Coop's ILEC territory. The RFP specifically states that there must be a single vendor for the entire contract. As a result, Ben Lomand will be able to submit a compliant bid, and Frontier will not. It is long past time to redress this situation and to end Ben Lomand Coop's unlawful monopoly.

In summary, Ben Lomand takes full advantage of its ability to compete outside its territory, but contrary to the policies set forth by U.S. Congress, the Tennessee legislature, the Commission and even the TRA, it resists competition when it comes knocking on its own door. Unfortunately the TRA yielded to Ben Lomand's procedural stalling tactics, and it is necessary for the Commission to take preemptive action to allow consumers in Ben Lomand Coop's territory to have a choice of local service providers.

II. The Commission Should Rule That The Interconnection Agreement Between Frontier of America And Ben Lomand Cooperative Is Now Effective.

Frontier of America already has a "statewide" Certificate of Need from the TRA. The only basis for the TRA to deny Frontier of America the ability to compete within the territory of Ben Lomand Coop is T.C.A. § 65-29-102. Frontier recognizes that in the *Hyperion* case the

Commission declined to direct the TRA to grant Hyperion's application for a CPCN.⁷ In the case at hand, by contrast, Frontier of America already holds a statewide certificate and is being prevented from exercising it solely because the TRA is insulating Ben Lomand Coop from competition contrary to law. Accordingly, the Commission should rule that Frontier of America is entitled to compete in Ben Lomand Coop's territory, and more specifically, that the conditions of the interconnection agreement are satisfied. There is no need for this proceeding to be remanded to the TRA, and it would be contrary to the public interest to do so. If the Commission remands any portion of this case, it may be confidently predicted that Ben Lomand Coop will again attempt to delay the advent of competition in its territory for yet another year by raising still more procedural issues with the TRA.⁸

Conclusion

For the reasons stated herein, the Commission should issue a declaratory ruling that T.C.A. § 65-29-102 is preempted by 47 U.S.C. § 253(a), that the conditions to the effectiveness of the interconnection agreement between Frontier of America and Ben Lomand Coop are

⁷ Hyperion Preemption Order, ¶ 22.

⁸ It appears that the TRA in this proceeding ignored the encouragement given to states and regulatory agencies by the Commission in the *Hyperion Preemption Order* "to review any similar statutes and regulations, and to repeal or otherwise nullify any that in their judgement violate section 253 as applied by this Commission." *Hyperion Preemption Order* at ¶23. This case is therefore unlike the situation in the *Silver Star Preemption Order*, in which the Commission declined to reverse the Wyoming PSC's denial of a CPCN. In the *Silver Star Preemption Order*, the Commission grounded its decision on the petitioner's statement that it was "confident that the PSC ... will quickly and completely abide by this Commission's preemption decision." *Silver Star Preemption Order* at ¶47.

satisfied, and that Frontier of America is now entitled to compete in the territory of Ben Lomand Coop pursuant to the terms of the interconnection agreement.

Respectfully Submitted,



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Date: December 14, 2005

Attachments: Exhibit A - Interconnection Agreement Between Frontier of America and Ben Lomand Coop

Exhibit B - Transcript of TRA Conference Rejecting Frontier's Petition for a Declaratory Ruling

**AGREEMENT FOR
LOCAL WIRELINE NETWORK INTERCONNECTION**

between

Ben Lomand Telephone Cooperative, Inc.

and

Frontier Communications of America, Inc.

Dated: July 6, 2004

AGREEMENT FOR LOCAL WIRELINE NETWORK INTERCONNECTION

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AGREEMENT FOR LOCAL WIRELINE NETWORK INTERCONNECTION

This Agreement For Local Wireline Network Interconnection ("Agreement") made this 6th day of July 2004, is by and between Ben Lomand Telephone Cooperative, Inc. a Tennessee corporation, having its principal place of business at 311 North Chancery Street, P O Box 670, McMinnville, Tennessee 37111 ("BLTC") and Frontier Communications of America, Inc., a Delaware corporation, having its principal place of business at 180 S. Clinton Avenue, Rochester, New York 14646 ("FCA"). BLTC and FCA may also be referred to herein singularly as a "Party" or collectively as "the Parties"

SECTION 1. RECITALS AND PRINCIPLES

BLTC is a telephone cooperative local exchange carrier authorized to provide telecommunications services in the State of Tennessee, and

FCA is a local exchange carrier authorized to provide telecommunications services in the State of Tennessee, and

The nature of the interconnection arrangement between the Parties established pursuant to this Agreement is of mutual benefit to both Parties and is intended to fulfill their needs to exchange local traffic, and

The Parties have in good faith negotiated, and agreed on local interconnection terms and conditions as set forth below, and

Notwithstanding the mutual commitments contained in this Agreement, the Parties nevertheless enter into this Agreement without prejudice to any positions they have taken previously, or may take in the future in any legislative, regulatory, judicial or other public forum addressing any matters, including matters related specifically to this Agreement, or other types of arrangements prescribed in this Agreement. In consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, BLTC and FCA hereby covenant and agree as follows:

SECTION 2. GENERAL DEFINITIONS

Except as otherwise specified herein, the following definitions will apply to all sections contained in this Agreement. Additional definitions that are specific to the matters covered in a particular section may appear in that section.

2.1. "Access Service Request" ("ASR") means the industry standard forms and supporting documentation used for ordering access services. The ASR will be used to identify the specific trunking and facilities request for interconnection.

2.2. "Automatic Number Identification" ("ANI") refers to the number transmitted through the network identifying the calling party.

2.3. "Carrier" means a telecommunication company authorized by the Commission to provide local exchange telecommunications services in the State of Tennessee.

2.4. "CLLI Codes" means Common Language Location Identifier Codes.

2.5. "Commission" means the Tennessee Regulatory Authority.

2.6. "DS1" is a digital signal rate of 1.544 Megabits per second ("Mbps").

2.7. "DS3" is a digital signal rate of 44.736 Mbps.

2 8 "Interconnection" in this Agreement refers only to the physical linking of two networks for the mutual exchange of traffic and only for purposes of transmitting and routing telephone exchange traffic or access traffic or both. Interconnection does not include the transport and termination of interexchange traffic.

2 9 "Local Exchange Routing Guide" ("LERG") is a Telecordia reference document used by carriers to identify NPA-NXX routing and homing information as well as network element and equipment designations.

2 10 "Local Traffic" means traffic that is originated by an end user of one Party and terminates to an end user of the other Party within BLTC's local serving area, including mandatory local calling scope arrangements established and defined by the applicable state commission. A mandatory local calling scope arrangement is an arrangement that provides end users a local calling scope, i.e. Extended Area Service ("EAS"), beyond their basic exchange serving area. Therefore local traffic, for purposes of this Agreement, includes both intra-exchange calls and EAS calls.

2 11 "Point of Interconnection" ("POI") means the physical location(s) at which the Parties' networks meet for the purpose of establishing interconnection.

2 12 "Rating Point" is the V&H coordinates associated with a particular telephone number for rating purposes.

2 13 "Transport and Termination" denotes transmission and switching facilities used for the exchange of local traffic between interconnected carrier networks.

2 14 "Wire Center" denotes a building or space within a building which serves as an aggregation point on a given carrier's network, where transmission facilities and circuits are connected or switched. Wire Center can also denote a building in which one or more central offices, used for the provision of basic exchange services and access services, are located. However, for purposes of interconnection service, Wire Center will mean those points eligible for such connections as specified in the FCC Docket No. 91-141 (Expanded Interconnection with LEC Facilities, Transport, Phase I), and rules adopted pursuant thereto.

SECTION 3. NETWORK INTERCONNECTION

The Parties hereto, agree to interconnect their facilities and networks for the transport and termination of local traffic.

3 1 Interconnection Trunking Arrangements

3 1 1 The Parties will interconnect their networks as specified in the terms and conditions contained in Attachment A attached hereto and incorporated by reference. POIs set forth in this Agreement, may be modified from time to time by either Party with the written consent of the other Party, which consent will not be unreasonably withheld.

3 1 2 Each Party will be responsible for the engineering and construction of its own network facilities on its side of the POI.

3 1 3 The Parties mutually agree that all interconnection facilities will be sized according to mutual forecasts and sound engineering practice, as mutually agreed to by the Parties during planning-forecasting meetings.

3 1 4 The Parties agree to establish trunk groups of sufficient capacity for local interconnection purposes. The Parties will mutually agree where one-way or two-way trunking will be available. The mutually agreed upon technical and operational interfaces, procedures, grade of service and performance standards for interconnection between the Parties are set forth in Attachment B, attached hereto and will conform with all generally accepted industry standards with regard to facilities, equipment, and services.

Each Party shall make available to the other Party trunks over which the originating Party can terminate Local Traffic of the end users of the originating Party to the end users of the terminating Party.

3 1.5 This Agreement is applicable only to the incumbent service areas of BLTC within the State of Tennessee. Both Parties agree to deliver only traffic within the scope of this Agreement over the connecting facilities as specified in Attachment A. Neither Party shall provide an intermediary or transit traffic function for the other Party's connection of its end users to the end users of a third party telecommunications carrier without the consent of all parties and without the establishment of mutually agreeable terms and conditions governing the provision of the intermediary functions. This Agreement does not obligate either Party to utilize any intermediary or transit traffic function of the other Party.

3 2 Testing and Trouble Responsibilities

BLTC and FCA agree that each will share responsibility for all maintenance and repair of trunks/trunk groups. The Parties agree to:

3 2 1 Cooperatively plan and implement coordinated repair procedures for the meet point and local interconnection trunks and facilities to ensure trouble reports are resolved in a timely and appropriate manner.

3 2 2. Provide trained personnel with adequate and compatible test equipment to work with each other's technicians.

3 2 3 Promptly notify each other when there is any change affecting the service requested, including the date service is to be started.

3 2 4. Coordinate and schedule testing activities of their own personnel, and others as applicable, to ensure its interconnection trunks/trunk groups are installed per the interconnection order, meet agreed upon acceptance test requirements, and are placed in service by the due date.

3 2 5 Perform sectionalization to determine if a trouble condition is located in its facility or its portion of the interconnection trunks prior to referring any trouble to each other.

3 2 6 Provide each other with a trouble reporting number to a work center that is staffed 24 hours a day/7 days a week.

3 2 7 Immediately report to each other any equipment failure which may affect the interconnection trunks.

3 2.8. Based on the trunking architecture, provide for mutual tests for system assurance for the proper recording of AMA records in each company's switch. These tests are repeatable on demand by either Party upon reasonable notice.

3 3 Interconnection Forecasting

3 3 1 Consistent with Section 3 1, the Parties agree to work cooperatively to forecast local traffic trunk requirements. The Parties will establish joint forecasting responsibilities for traffic utilization over trunk groups. The Parties recognize that planning for, and the availability of, facilities and/or equipment are dependent on cooperative forecasting between the Parties. Intercompany forecast information will be provided by the Parties to each other at least twice a year. When necessary, the Parties agree to provide additional trunking needed to maintain the grade of service. The Parties agree to connect trunks at a minimum DS1 level to exchange local traffic on a bi-directional basis. All connecting facilities will be at a DS1 level, multiple DS1 level, or DS3 level and will conform to industry standards. Where local traffic volumes are not established, two-way trunk groups will be provisioned initially based on forecasts jointly developed by the Parties. FCA must provide the initial two year forecast of its trunk requirements. All trunk facilities will be engineered to a P 01 grade of service. Should a Party identify the

need for more or less trunking facilities between the parties to maintain the grade of service, the Party will provide notice to the other Party in writing

3.3.2 The forecasts will include the number, type and capacity of trunks as well as a description of major network projects anticipated for the following six months. Major network projects include trunking or network rearrangements, shifts in anticipated traffic patterns, or other activities that are reflected by a significant increase or decrease in trunking demand for the following forecast period. The Parties agree to jointly plan for the effects of other traffic on their networks, including issues of network capacity, forecasting and compensation calculation.

3.3.3 All requests from one Party to the other Party to establish, add, change, or disconnect trunks will be made in writing using the industry standard Access Service Request.

3.4 Reciprocal Compensation For the Transport and Termination of Interchanged Traffic

3.4.1 The Parties agree that the mutual provisions and relative obligations of the Parties pursuant to this Agreement represent good and valuable consideration, the sufficiency of which between the Parties is acknowledged, and that neither Party has any obligation to provide any monetary compensation to the other Party for the other Party's origination or termination of local traffic originating on one Party's network and terminating on the other Party's network within the scope of this Agreement. The specific compensation terms and conditions set forth in this Agreement are related to, dependent on, and limited to the provision of local exchange service to end users located in the specific geographic areas that are the subject of this Agreement and all other terms and conditions set forth in this Agreement.

3.4.2 A maintenance service charge applies whenever either Party requests the dispatch of the other Party's personnel for the purpose of performing maintenance activity on the interconnection trunks, and any of the following conditions exist:

3.4.2.1 No trouble is found in the interconnection trunks, or

3.4.2.2 The trouble condition results from equipment, facilities or systems not provided by the Party whose personnel were dispatched, or

3.4.2.3 Trouble clearance did not otherwise require a dispatch, and upon dispatch requested for repair verification, the interconnection trunk does not exceed maintenance limits.

3.4.3 If a maintenance service charge has been applied and trouble is subsequently found in the facilities of the Party whose personnel were dispatched, the charge will be canceled.

3.4.4 Billing for maintenance service by either party is based on each half-hour or fraction thereof expended to perform the work requested. The time worked is categorized and billed at one of the following three rates: (1) basic time, (2) overtime, or (3) premium time as defined in BLTC's interstate access tariff.

3.5 Reserved for Future Use

3.6 Coordination of Transfer of Service

3.6.1 Coordination of Transfer of Service To serve the public interest of end users, the Parties agree that when an end user transfers service from one Party to the other Party it will be necessary for the parties to coordinate the timing for disconnection from one Party and connection with the other Party so that transferring end users are not without service for any extended period of time. Other coordinated activities associated with transfer of service will also need to be coordinated between the Parties to ensure quality services to the public.

3.6.2 Procedures for Coordinated Transfer of Service Activities The Parties agree to establish mutually acceptable, reasonable, and efficient transfer of service procedures that utilize the industry

standard LSR format for the exchange of necessary information for coordination of service transfers between the Parties. Each party will designate a local representative for the purpose of exchanging requests for disconnect, service announcement initiation, and number portability activity between the Parties. Ben Lomand will develop mutually agreeable, specific procedures for the exchange of the necessary information pursuant to this subsection.

3 6 3 No Charges for Coordinated Transfer of Service Activities There will be no charges between the Parties or compensation provided by one party to the other Party for the coordinated transfer of service activities described in this Section 3 6.

3 6 4 Letter of Authorization Each Party is responsible for obtaining a Letter of Authorization (LOA) from each end user initiating transfer of service from one Party to the other Party. The Party obtaining the LOA from the end user will furnish it to the other Party. Transmission of the LOA by facsimile is preferred in order to expedite order processing.

3 6 5 Transfer of Service Announcement In the case where an end user changes service from one Party to the other Party and the end user does not retain its original telephone number, the Party formerly providing service to the end user will provide a transfer of service announcement on the vacated telephone number. This announcement will provide details regarding the new number that must be dialed to reach this end user. The service announcement will be provided by the Party formerly providing service for a minimum of four months.

3 6 6 Disconnect and Transfer of Service Announcement Coordination for Service Transfers with Change of Number In the case where an end user changes service from one Party to the other Party and the end user does not retain its original telephone number, the Party from which the end user is transferring will honor requests for disconnect and service announcement initiation from the Party to which the end user is transferring. The Party to which the end user is transferring service will provide to the other Party the end user's name, address, current telephone number, new telephone number, and date service should be transferred using the industry standard LSR format. The Party from which the end user is transferring will coordinate with the other Party the disconnect and service announcement initiation to coincide with the service transfer request date. In instances where the transferring end user changes its telephone number, the Party from which the end user is transferring service will place a service announcement on the vacant number no later than 5 00 P M local time on the next business day following the service transfer date. It is recommended that the installation date precede the disconnection date.

3 6 7 Disconnect and Coordination of Local Number Portability for Service Transfers without Change of Number In the case where an end user changes service from one Party to the other Party and the end user retains its original telephone number(s), the Party from which the end user is transferring will honor requests for disconnect and local number portability from the Party to which the end user is transferring. The Party to which the end user is transferring will provide the other Party the end user's name, address, current telephone number, new network number porting information, and date service should be transferred using the industry standard LSR format. The Parties will coordinate the disconnect, connect, and number portability activities in accordance with the North American Numbering Council (NANC) flows.

3 6 8 Combined Transfer of Service Requests. Each Party will accept transfer of service requests from the other Party for one end user that includes combined requests for transfers where the end user will retain one or more telephone numbers and where the end user will not change one or more telephone numbers.

3 6 9 Bulk Requests for Transfer of Service From time to time, either Party may benefit from the transfer of service for groups. The Parties agree to process bulk transfer of service requests for end users having the same billing account number.

3 6 10 Access to the Network Interface Device (NID) Each Party will allow the other Party access to the customer side of the Network Interface Device (NID) consistent with Federal Communication Commission rules. The Party to which the end user is transferring service may move all inside wire from

the other Party's existing NID to one provided by the Party to which the end user is transferring service. Where a NID is of the type which provides for customer access to one side of the NID, the Party to which the end user is transferring service may elect to remove the inside wire at the connection(s) within the customer side of the NID. Where a NID is of an older type not allowing access to the customer side of the NID, the Party to which the end user is transferring service must make a clean cut of the inside wire at the closest point to the NID.

3.7 Service Ordering

Access Service Requests (ASR) will be used by both parties to request trunks and special circuits ordered under this agreement. Local Service Requests (LSR) will be used to order local service including Local Number Portability.

SECTION 4. AUDIT

Either Party may, upon written notice to the other Party, conduct an audit, during normal business hours, only on the source data/documents as may contain information bearing upon the services being provided under the terms and conditions of this Agreement. An audit may be conducted no more frequently than once per 12 month period, and only to verify the other Party's compliance with provisions of this Agreement. The notice requesting an audit must identify the date upon which it is requested to commence, the estimated duration, the materials to be reviewed, and the number of individuals who will be performing the audit. Each audit will be conducted expeditiously. Any audit is to be performed as follows: (i) following at least 45 days' prior written notice to the audited Party, (ii) subject to the reasonable scheduling requirements and limitations of the audited Party, (iii) at the auditing Party's sole cost and expense, (iv) of a reasonable scope and duration, (v) in a manner so as not to interfere with the audited Party's business operations.

SECTION 5. DISPUTE RESOLUTION

The Parties agree that in the event of a default or violation hereunder, or for any dispute arising under this Agreement or related agreements, the Parties will first confer to discuss the dispute and seek resolution prior to taking any action before any court or regulator, or before authorizing any public statement about or authorizing disclosure of the nature of the dispute to any third party. Such conference will occur at least at the Vice President level for each Party. In the case of FCA, its Vice President of Interconnection, or equivalent officer, will participate in the meeting, and for BLTC, its Executive Vice President, or management person one level below that level, will participate. In the event the Parties are unable to resolve the dispute through conference, either Party may initiate an appropriate action in any regulatory or judicial forum of competent jurisdiction.

SECTION 6. FORCE MAJEURE

If the performance of the Agreement, or any obligation hereunder is prevented, restricted or interfered with by reason of any of the following:

- 6.1 Fire, explosion, flood, earthquake, hurricane, cyclone, tornado, storm, epidemic, breakdown of plant or power failure;
- 6.2 War, revolution, civil commotion, acts of public enemies, blockade or embargo,
- 6.3 Any law, order, proclamation, regulation, ordinance, demand or requirement of any government or any subdivision, authority, or representative of any such government,
- 6.4 Labor difficulties, such as strikes, picketing or boycotts;
- 6.5 Delays caused by other service or equipment vendors;

6 8. Any other circumstance beyond the reasonable control of the Party affected; then the Party affected, upon giving prompt notice to the other Party, will be excused from such performance on a day-for-day basis to the extent of such prevention, restriction, or interference (and the other Party will likewise be excused from performance of its obligations on a performance so prevented, restricted or interfered with), provided that the Party so affected will use its best efforts to avoid or remove such causes of nonperformance and both Parties will proceed to perform with dispatch whenever such causes are removed or cease.

SECTION 7. COMMISSION DECISION

This Agreement will at all times be subject to such review by the Commission or FCC as permitted by the Telecommunications Act of 1996. If any such review renders the Agreement inoperable or creates any ambiguity or requirement for further amendment to the Agreement, the Parties agree to negotiate in good faith to agree upon any necessary amendments to the Agreement.

SECTION 8. REGULATORY CHANGES

Either Party may request an amendment to take into account any changes in Commission or FCC rules and requirements, including changes resulting from judicial review of applicable regulatory decisions.

SECTION 9. REGULATORY APPROVAL

Each Party is responsible for obtaining and maintaining in effect all state regulatory commission approvals and certifications that are required for that Party's provision of local exchange and/or local exchange access services in the service areas covered by this Agreement. The Parties agree to jointly file this Agreement with the Commission and to fully cooperate with each other in obtaining Commission approval. Notwithstanding this Section 9 or any other provision of this Agreement, BLTC has not waived its status or rights as a telephone cooperative in Tennessee pursuant to, but not limited to, Tennessee Code Annotated 65-4-101, 65-29-101, and 65-29-130.

SECTION 10. DIRECTORY LISTINGS

10.1 Introduction

This Directory Listings section sets forth terms and conditions with respect to the inclusion of FCA's customer listings in BLTC's published directories.

10.1.1 In those areas where FCA and BLTC both provide local exchange telephone service and have established interconnection for the exchange of traffic pursuant to the terms of this Agreement (defined as the "Listing Area"), BLTC or its contractors will include White Pages and Yellow Pages listing information for FCA's end users in the Listing Area in appropriate BLTC directories provided that FCA provides listing information to BLTC on a timely basis. BLTC will include the White Pages and Yellow Pages listing information in BLTC directories at no charge to FCA provided that FCA provides subscriber listing information at no charge to BLTC.

10.1.2 Any references in this Section 10 to BLTC procedures, practices, requirements, or words of similar meaning, shall also be construed to include those of BLTC's contractors that produce directories on its behalf.

10.2 Directory Listings

10.2.1 At no charge to FCA, BLTC will include in appropriate White Pages directories the primary alphabetical listings of those end users located within the Listing Area.

10.2.2 At no charge to FCA, BLTC agrees to include one basic White Pages listing for each FCA customer located within the geographic scope of BLTC's White Page Directories within the Listing Area.

and a courtesy Yellow Page listing for each FCA business customer located within the geographical scope of BLTC's Yellow Page directories. A basic White Page listing is defined as a customer name, address, and assigned number. Basic White Pages listings of FCA customers will be inter-filed with listings of BLTC and other LEC customers. Directory listings will make no distinction between FCA and BLTC subscribers.

10 2 3 FCA may obtain on behalf of FCA's customers secondary White Page listings from BLTC, and BLTC agrees to provide to FCA secondary White Page listings at the same rate(s) charged to BLTC's end user customers.

10 2 4 For the listings provided by FCA for inclusion in BLTC's directories, FCA will furnish to BLTC on a timely basis subscriber listing information as required to prepare and print the alphabetical listings of said directory.

10 2 5. The Parties will cooperate in the development of a suitable timetable for the submission of customer listing information for inclusion in the appropriate BLTC directories. FCA will provide subscriber listing information to BLTC in such format as is consistent with a base listing format normally provided to publishers of directories. FCA will use reasonable commercial efforts to provide the subscriber listing information in a format that will accommodate inclusion on a mechanized basis in the BLTC directory publishing process. BLTC will not impose on FCA any service order or any other charges for processing, handling, or inclusion of FCA's listings pursuant to this Section 10.

10 3 Limitation Of Liability And Indemnification

10 3 1 Neither Party will be liable to the other Party for any losses or damages arising out of errors, interruptions, defects, failures, delays, or malfunctions relating to the White Pages listings and services, including any and all associated equipment and data processing systems, unless said losses or damages result from the indemnifying party's gross negligence or willful or wanton or intentional misconduct.

10 3 2 FCA shall defend, indemnify and hold BLTC and its affiliates, officers and agents harmless from any and all third party claims, suits, actions, demands, costs, settlements losses, damages expenses and all other liabilities, including reasonable attorney fees arising out of or resulting from a breach of contract, breach of warranty and/or the intentional and negligent acts or omissions on the part of FCA, its employees, officers, affiliates and agents in the performance of, or failure to perform, the activities contemplated by this Section 10 of this Agreement including, but not limited to, the provision of customer listing information on an accurate and timely basis. BLTC shall defend, indemnify and hold FCA and its affiliates, officers and agents harmless from any and all third party claims, suits, actions, demands, costs, settlements losses, damages expenses and all other liabilities, including reasonable attorney fees arising out of or resulting from a breach of contract, breach of warranty and/or the intentional and negligent acts or omissions on the part of BLTC, its employees, officers, affiliates and agents in the performance of, or failure to perform, the activities contemplated by this Section 10 of this Agreement.

10 3 3 Notwithstanding any other provisions of this Agreement, the Parties agree that (a) BLTC has no legal duty or obligation to publish any FCA customer listing in any BLTC directory with respect to any FCA customer for which FCA does not provide BLTC the FCA customer listing information in accordance with this Section 10 of this Agreement, and (b) BLTC will not be liable to FCA or any FCA customer, for BLTC's failure to publish any FCA customer listing in any BLTC directory with respect to any FCA customer which FCA does not provide to BLTC the FCA customer listing information in accordance with this Section 10 of this Agreement.

SECTION 11. SECTION 252 OF THE TELECOMMUNICATIONS ACT OF 1996

The Parties agree that the provisions of Section 252 of the Telecommunications Act of 1996, including but not limited to Section 252(i), shall apply to this Agreement, together with Tennessee Regulatory Authority and FCC interpretive regulations in effect from time to time.

SECTION 12. TERM OF AGREEMENT

12.1 Term Subject to the termination provisions contained in this Agreement, the initial term of this Agreement shall be one (1) year from the effective date referenced in Section 13 of this Agreement. This Agreement shall continue in force and effect for consecutive one (1) year terms unless on a date no less than three (3) months prior to the expiration of the initial term or any subsequent term, either Party requests the commencement of negotiations pursuant to Section 252 of the Act on a new Agreement. The termination provisions in this section do not at any time affect either Party's rights under Section 252(i) of the Act.

12.2 Post-Termination Arrangements For service arrangements made available under this Agreement and existing at the time of termination, those arrangements will continue without interruption until a replacement agreement has been executed by the Parties either (a) under a new agreement voluntarily executed by the Parties, (b) under a new agreement negotiated pursuant to the provisions of Section 252 of the Act, or c) under any agreement available according to the provisions of Section 252(i) of the Act.

SECTION 13. EFFECTIVE DATE

13.1 This Agreement will become effective upon

(a) issuance of a final order by a regulatory body or court with the requisite jurisdiction to grant FCA with all necessary regulatory approval and certification to offer local exchange and local exchange access services in the geographic areas to which this Agreement applies; and

(b) approval of this Agreement by the Commission

The Parties recognize that, in the absence of a final order under subsection (a) immediately above, a question of law exists with respect to whether the Commission has statutory authority to authorize FCA or any other carrier to provide local exchange and/or local exchange access services in the areas of the State of Tennessee served by BLTC or other telephone cooperatives. Notwithstanding this uncertainty, the Parties have acted in good faith to negotiate this Agreement and fulfill their obligations under the Act in order to avoid unnecessary dispute and delay. By executing this Agreement, neither Party waives any right with respect to issues related to the position either Party may assert in any forum with respect to issues related to the matter of the Commission's statutory authority with respect to geographic areas served by telephone cooperatives or any other matters.

SECTION 14. AMENDMENT OF AGREEMENT

The Parties may mutually agree to amend this Agreement in writing. Because it is possible that amendments to this Agreement may be needed to fully satisfy the purposes and objectives, the Parties agree to work cooperatively, promptly, and in good faith to negotiate and implement any such additions, changes, and/or corrections to this Agreement. Any amendment must be made in writing.

SECTION 15. LIMITATION OF LIABILITY

EXCEPT AS OTHERWISE PROVIDED HEREIN, NEITHER PARTY WILL BE LIABLE TO THE OTHER IN CONNECTION WITH THE PROVISION OR USE OF SERVICES PROVIDED UNDER THIS AGREEMENT. NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY LOSS, COST, CLAIM, INJURY, LIABILITY OR EXPENSE, INCLUDING REASONABLE ATTORNEY'S FEES, RELATING TO OR ARISING OUT OF ANY ORDINARY NEGLIGENT ACT OR OMISSION BY A PARTY. IN NO EVENT

WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, INCOME OR REVENUE, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, WHETHER SUCH DAMAGES ARISE OUT OF BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORY OF LIABILITY AND WHETHER SUCH DAMAGES WERE FORESEEABLE OR NOT AT THE TIME THIS AGREEMENT WAS EXECUTED

SECTION 16. INDEMNITY

Each Party will indemnify and hold the other harmless from any liabilities, claims or demands (including the costs, expenses and reasonable attorney's fees on account thereof) that may be made by third parties for (a) personal injuries, including death, or (b) damage to tangible property resulting from the sole negligence and/or sole willful misconduct of that Party, its employees or agents in the performance of this Agreement. Each Party will defend the other at the other's request against any such liability, claim, or demand. Each Party will notify the other promptly of written claims or demands against such Party of which the other Party is solely responsible hereunder.

SECTION 17. ASSIGNMENT

This Agreement may not be assigned to another Party without written consent of the other Party, which consent will not be unreasonably withheld.

SECTION 18. CONTROLLING LAW

This Agreement was negotiated by the Parties in accordance with the terms of the Telecommunications Act of 1996 and the laws of the State of Tennessee. It will be interpreted solely in accordance with the terms of the Telecommunications Act and applicable state law.

SECTION 19. DEFAULT

If either Party believes the other is in breach of this Agreement or otherwise in violation of law, it will first give sixty (60) days notice of such breach or violation and an opportunity for the allegedly defaulting Party to cure. Thereafter, the Parties will employ the dispute resolution procedures set forth in this Agreement.

SECTION 20. NONDISCLOSURE

20.1 "Confidential Information" as used herein means any information in written, oral, or other tangible or intangible forms which may include, but is not limited to, ideas, concepts, know-how, models, diagrams, flow charts, data, computer programs, marketing plans, business plans, customer names, and other technical, financial, or business information, which is designated as "confidential" or "proprietary" by either Party in the belief that it contains a trade secret or other confidential research, development, or commercial or financial information.

20.2 All written Confidential Information to be covered by this Agreement will be identified by a restrictive legend which clearly specifies the proprietary nature of the information.

20.3 If the Confidential Information is provided orally, it will be deemed to be confidential or proprietary if specifically identified as such by either Party or if the information is clearly recognizable to be of a confidential and proprietary nature.

20.4 Any Confidential Information produced, revealed, or disclosed by either Party to the other will be used exclusively for purposes of business discussions, negotiations, fulfilling the terms of this Agreement, and/or other purposes upon such terms and conditions as may be agreed upon between the Parties in writing, and will be kept separately from other documents and materials.

20.5 All persons receiving access to Confidential Information will not disclose it nor afford access to it to any other person not specifically authorized by this Agreement to obtain the Confidential Information.

nor will such Confidential Information be used in any other manner or for any other purpose than as provided in this Agreement. No copies or reproductions will be made of any Confidential Information or any part thereof, whether by mechanical, handwritten, or any other means, without the prior written consent of the Party providing it. This Agreement authorizes distribution, disclosure or dissemination only to employees and duly authorized agents of the parties with a need to know such Confidential Information and which employees and agents agree to be bound by the terms of this Section.

20.6 Upon request by the disclosing Party, the receiving Party will return all tangible copies of Confidential/Proprietary Information, whether written, graphic or otherwise, except that the receiving Party may retain one copy for archival purposes.

20.7 Notwithstanding any other provision of this Agreement, this section will apply to all information furnished by either Party to the other in furtherance of the purpose of this Agreement, even if furnished before the date of this Agreement.

20.8 These obligations shall not apply to any Confidential Information that (1) was legally in the recipient's possession prior to receipt from the source, (2) was received in good faith from a third party not subject to a confidential obligation to the source, (3) now is or later becomes publicly known through no breach of confidential obligation by the recipient, (4) was developed by the recipient without the developing persons having access to any of the Confidential Information received in confidence from the source, or (5) that is required to be disclosed pursuant to subpoena or other process issued by a court or administrative agency having appropriate jurisdiction, provided, however with respect only to this last exception that the recipient shall give prior notice to the source and shall reasonably cooperate if the source deems it necessary to seek protective arrangements.

20.9 The obligation of confidentiality and use with respect to Confidential Information disclosed by one Party to the other shall survive any termination of this Agreement for a period of three (3) years from the date of the initial disclosure of the Confidential Information.

SECTION 21. DISCLAIMER OF AGENCY; NO THIRD PARTY BENEFICIARIES; INDEPENDENT CONTRACTOR

Neither this Agreement, nor any actions taken by either Party, in compliance with this Agreement, shall be deemed to create an agency or joint venture relationship between the Parties or any relationship. Neither this Agreement, nor any actions taken by either Party in compliance with this Agreement, shall create an agency, or any other type of relationship or third party liability between the Parties or between either Party and the customers of the other Party. This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein express or implied shall create or be construed to create any third-Party beneficiary rights hereunder. Nothing in this Agreement shall constitute a Party as a legal representative or agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

SECTION 22. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES

EXCEPT AS EXPRESSLY PROVIDED UNDER THE AGREEMENT, NEITHER PARTY MAKES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, FUNCTIONS AND PRODUCTS IT PROVIDES UNDER OR CONTEMPLATED BY THIS AGREEMENT AND THE PARTIES DISCLAIM THE IMPLIED WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.

SECTION 23. NO LICENSE

23.1 Nothing in this Agreement shall be construed as the grant of a license, whether express or implied, with respect to any patent, copyright, trademark, trade name, trade secret or any other proprietary or intellectual property now or hereafter owned, controlled or licensable by either Party. Neither Party may use any patent, copyrightable materials, trademark, trade name, trade secret or other intellectual property right of the other Party except in accordance with the terms of a separate license agreement between the parties granting such rights.

23.2 Neither Party shall have any obligation to defend, indemnify or hold harmless, or acquire any license or right for the benefit of, or owe any other obligation or have any liability to, the other Party or its customers based on or arising from any claim, demand, or proceeding by any third party alleging or asserting that the use of any circuit, apparatus, or system, or the use of any software or the performance of any service or method, or the provision of any facilities by either Party under this Agreement, alone or in combination with that of the other Party, constitutes direct, vicarious or contributory infringement or inducement to infringe, misuse or misappropriation of any patent, copyright, trademark, trade secret, or any other proprietary or intellectual property right of any Party or third party. Each Party, however, shall offer to the other reasonable cooperation and assistance in the defense of any such claim.

23.3 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE PARTIES AGREE THAT NEITHER PARTY HAS MADE, AND THAT THERE DOES NOT EXIST, ANY WARRANTY, EXPRESS OR IMPLIED, THAT THE USE BY THE PARTIES OF THE OTHER'S FACILITIES, ARRANGEMENTS, OR SERVICES PROVIDED UNDER THIS AGREEMENT SHALL NOT GIVE RISE TO A CLAIM BY ANY THIRD PARTY OF INFRINGEMENT, MISUSE, OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHT OF SUCH THIRD PARTY.

SECTION 24. JOINT WORK PRODUCT

This Agreement is the joint work product of the Parties and has been negotiated by the Parties and shall be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences shall be drawn against either Party.

SECTION 25. NON-WAIVER

Failure of either Party to insist on performance of any term or condition of this Agreement or to exercise any right or privilege hereunder shall not be construed as a continuing or future waiver of such term, condition, right or privilege.

SECTION 26. ENTIRE AGREEMENT

This Agreement and any Exhibits, Schedules, or tariffs which are incorporated herein by this reference, sets forth the entire understanding and supersedes prior agreements between the Parties relating to the subject matter contained herein and merges all prior discussions between them, and neither Party shall be bound by any definition, condition, provision, representation, warranty, covenant or promise other than as expressly stated in this Agreement or as is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of the Party to be bound thereby.

SECTION 27. TAXES

It is the mutual understanding of the Parties to this Agreement that there are no taxes specifically applicable to the subject matter of this Agreement or to either Party as a result of entering into this Agreement that would not otherwise be applicable to each respective Party. In the event that any government authority, however, determines to the contrary that a tax or taxes are applicable to the subject matter of this Agreement, then the following provision will apply. Any state or local excise, sales, or use taxes, if any (excluding any taxes levied on income), resulting from the performance of this Agreement shall be borne by the Party upon which the obligation for payment is imposed under applicable law, even if the obligation to collect and remit such taxes is placed upon the other Party.